

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**YOLANDA TART,**

**Plaintiff,**

**v.**

**FIVE BELOW, LLC,**

**Defendant.**

**Case No. 22-cv-176-JFH-CDL**

**OPINION AND ORDER**

This matter is before the Court on the Motion for Default Judgment (“Motion”) filed by Plaintiff Yolanda Tart (“Plaintiff”). Dkt. No. 13. Plaintiff, proceeding pro se, initiated this action by filing a civil complaint on April 13, 2022. Dkt. No. 1. Plaintiff filed a notice regarding service of the complaint on June 2, 2022. Dkt. No. 6. Although Plaintiff submitted two return receipts indicating that the complaint was mailed to Defendant Five Below, LLC (“Five Below”) on May 10, 2022, she did not submit a return receipt as required under Federal Rule of Civil Procedure 4(e)(1) (providing that service may be made in accordance with state law) and 12 O.S. § 2004(C)(2)(b) (providing that “[s]ervice by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee.”).<sup>1</sup> Dkt. No. 6; Dkt. No. 11. The Court granted Plaintiff leave to file an amended complaint, which she did on June 21, 2022. Dkt. No. 12.

Plaintiff now moves for default judgment against Five Below. Dkt. No. 13. However, Plaintiff’s Motion does not comply with Federal Rule of Civil Procedure 55(a) or Local Rule 55(a),

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<sup>1</sup> The Court also notes that the second return of service filed by Plaintiff does not include a service date from which the Answer deadline could be calculated. *See* Fed. R. Civ. P. 12 (providing that a defendant must serve an answer “within 21 days after being served with the summons and complaint.”).

which require that the Court Clerk enter an Entry of Default before default judgment can be granted. Moreover, although the record does not show that Five Below was served with a copy of the amended complaint, it filed a motion to dismiss the amended complaint on July 14, 2022. Dkt. No. 15. Because Plaintiff's Motion does not comply with the applicable procedural rules and a responsive pleading has been filed, the Motion [Dkt. No. 13] is DENIED.

IT IS SO ORDERED this 26<sup>th</sup> day of July 2022.

  
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JOHN F. HEIL, III  
UNITED STATES DISTRICT JUDGE